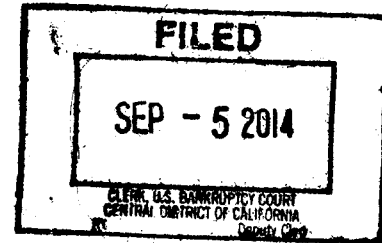


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Attorneys for Plaintiff  
Kelly Furie



UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

IN RE:

RUSSELL FURIE

Debtor

Kelly Furie

Plaintiff,

vs

Russell Furie

Defendant.

) CASE NO: 2:13-bk-18101 BR

) Adversary Number: 2:13-BK-1601BR

) Declaration of Plaintiff  
) Kelly Furie

) Trial Date: 10/22/14  
) Dept: 1668

TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY

JUDGE:

Plaintiff Kelly Furie respectfully submits this  
declaration:

1. I am a Plaintiff in the above-described action. I am  
familiar with the facts and circumstances forming the basis of

1 this lawsuit and have personal knowledge of the facts stated  
2 herein.

3 **Historical Facts**

4 1. Russell Furie and I were married on November 2, 1996.  
5 We separated on September 26, 2009.

6 2. The purpose of the separation, was clear, Russ wanted  
7 to protect our marital assets, as our former landlord for A+  
8 Teaching Supplies, Octagon in a lawsuit was suing me, and Russ  
9 wanted to protect all of our assets.

10 3. Attached hereto as Exhibit 1, is an email from Russ  
11 acknowledging this fact that the purpose of our separation was  
12 to protect the family and more specifically that the goal was:  
13

14 "(1) Keep the family together (2) Make Kelly and the family  
15 collection proof; (3) Allow for Kelly to re-establish her  
16 credit;(4) Allow for Kelly to re-establish her ownership  
17 interests". (See Exhibit 1 page 1)  
18

19 4. In an effort to protect the assets, we filed for legal  
20 separation on August 25, 2009. We entered into a settlement  
21 agreement in which all of the assets were awarded to Russ. See  
22 Exhibit 2.  
23

24 5. Under this agreement, Russ acquired all of the  
25 community assets, including all interests in several profitable  
26 businesses, 100% ownership in RKF Investments Inc., 100%  
27 ownership interest in RK Furie Family Trust; the timeshare in  
28

1 Laguna Beach, and most importantly the title to the family home  
2 located at 26808 Terravista Court in Canyon Country.

3 6. Russ knew that under this agreement he was getting all  
4 of the assets and he actually informed me in writing that he was  
5 aware that the agreement was unfair to me but that it needed to  
6 be done to "keep the family together". Russ confirmed this fact  
7 himself in an email to me dated September 1, 2009. See **Exhibit**  
8  
9 **3.**

10 7. Russ' email of September 1, 2009 referenced, and  
11 included as attachments, a Terms & Conditions For A Plus  
12 Teaching Supplies, my business, a Co-Habitation Agreement and A  
13 Marital Settlement Agreement, see **Exhibit 4**. We did not sign any  
14 of these agreements, the agreement we eventually did sign, at  
15 the request of Russ, was the judgment of legal separation,  
16  
17 **Exhibit 2.**

18 8. Under the agreement that we did eventually sign, I  
19 waived my right to receive spousal support in exchange for being  
20 allowed to live in the family home, which was awarded to Russ,  
21 until our youngest child, Mackenzie turned 18 or until 2019.  
22 This was a long-term marriage, which would have allowed me to  
23 receive spousal support for life.  
24

25  
26 ///

27 ///

28 ///

**Waiver of Spousal Support/Fraud  
(11 USC §523(a)(4))**

9. Throughout our marriage, Russ was the primary wage earner in the family. When he was employed he would routinely make approximately \$170,000 a year. He made enough funds to cover the mortgage and all of our family expenses, which totaled approximately \$7,000.00 a month.

10. Throughout our marriage I earned very little money. During our marriage I opened up a teaching supply store in Canyon Country. The average income per year from this store was approximately \$20,000.00 a year.

11. Prior to the legal separation judgment being signed and filed with the Court, my teaching supply store was losing money. Russ would often give me money to pay the rent on the store and pay for supplies. Russ would call these payments as "loans" and stated I would owe the funds back to him. See **Exhibit 4 page 3.**

12. It should be noted that eventually I had to close the store, A+ Teaching Supply completely and this was done in October 2011.

13. I agreed with Russ that we should "separate" so as to protect the bulk of our assets from my creditors and to protect Russ. I was ok with this agreement as we would still be living together in the family home and Russ would be paying all of the

1 bills, including my car payment, the mortgage on the family  
2 home, and all of the bills. In short, the "legal separation" was  
3 not really a separation. It was a sham designed to protect our  
4 assets from my creditor Octagon.

5 14. Moreover, I trusted Russ to take care of the kids, and  
6 me as I loved him very much and he was my husband and father of  
7 my kids. Russ, during this time, would constantly tell me over  
8 and over and over again not to worry about money that he would  
9 provide for the children and me.  
10

11 15. Russ convinced me that I had to waive my right to  
12 receive spousal support in the agreement. He told me not to  
13 worry about the waiver of spousal support as I would receive the  
14 equivalent of spousal support by the fact that he would be  
15 paying the mortgage on the family home and that he would be  
16 paying the electric bill for the house etc. and that I and the  
17 children would remain in the family home until our youngest  
18 daughter Mackenzie turned 18 years old. At the time of the  
19 agreement she was only 8 years old. And, most importantly, Russ  
20 stated that I should not be worried about the waiver of spousal  
21 support because we would still be living together. He often  
22 reminded me that the purpose of the agreement was to protect the  
23 assets from Octagon, my creditor.  
24  
25  
26

27 16. Based upon Russ' statements to me as well as our  
28 children and his continued declarations by him that he was

1 trying to protect our assets, both verbally to me and our  
2 children and in writing, **Exhibits 1, 3 and 4**, I trusted him that  
3 he would take care of children and me and that he would provide  
4 a home for us until Mackenzie turned 18. So I waived my right to  
5 receive spousal support.

6  
7 17. Russ even told our children that they should not  
8 worry, as we would be living in the family home and that we  
9 would be taken care of. See **Exhibit 5**

10 18. Had I known that this was all a lie and that Russ  
11 never intended to take care of children and me, I would never  
12 have waived my right to receive spousal support and I would  
13 never have allowed him to take all of the assets of the  
14 marriage, the family home, RKF Investments, RK Furie Family  
15 Trust, H Roth Management LLC.

16  
17 19. I understand that under California law, specifically,  
18 Family Code §'s 4336 and 4337 respectfully, the family court in  
19 a marriage that is of 10 years or older, the court retains  
20 jurisdiction indefinitely to award spousal support and in the  
21 case of a marriage of 10 years or older the supported party,  
22 which would be me, is entitled to receive spousal support until  
23 death of either myself or Russ or I got remarried. See Family  
24 Code §'s 4336 & 4337.

25  
26  
27 20. Russ and I were married for 12 years and 10 months.  
28 Thus, pursuant to Family Code §'s 4336 and 4337 I would be

1 entitled to receive spousal support until either Russ or I died,  
2 or I got remarried. I have yet to get remarried and we are both  
3 still alive.

4 21. Since the judgment of legal separation was entered,  
5 Russ immediately stopped paying the mortgage on our family home  
6 and the home proceeded to go into default. It was eventually  
7 foreclosed upon in 2012.  
8

9 22. Since the foreclosure I, and our two children have  
10 been residing with friends and have literally moved three times,  
11 often sleeping on the floor at our friend's houses, or on their  
12 couches.  
13

14 23. I could not afford to rent an apartment on the child  
15 support that Russ was paying of \$1,454.00 a month and pay for  
16 food, car insurance and all of the other essentials of raising  
17 two children.  
18

19 24. I would often go without food so that I can pay for  
20 food for our children and ensure that they had clean and good  
21 clothes to wear to school.

22 25. I would often go without food so that I can have the  
23 necessary funds to ensure that our children enjoyed their life,  
24 our son Kyle can play baseball and our daughter Mackenzie can do  
25 ballet.  
26

27 26. I would often sacrifice my life and my happiness so  
28 that my children could be happy, albeit living with others.

1 27. I never expected that I would be homeless and that I  
2 would go hungry. I trusted Russ when he repeatedly told me that  
3 he would take care of the children and me. I never expected that  
4 Russ would lie to me.

5 28. Russ never intended to pay the mortgage on the family  
6 home and allow the children and myself to reside there until  
7 Mackenzie reached 18. Russ never intended to share the community  
8 assets with me, and place my name back on all community assets  
9 as he stated he would in **Exhibit 1**.

10  
11 29. After I noticed that Russ was not paying the mortgage  
12 on the home and we were going to be foreclosed, Russ and I, with  
13 counsel, renegotiated our agreement and on September 29, 2010  
14 and October 26, 2010 to allow me to take over the family home as  
15 an asset and that Russ was going to bring the home current and  
16 then I was to take over the asset. See **Exhibit 6**

17  
18 30. Again still trusting Russ that he was going to pay the  
19 mortgage current and allow me to refinance and/or do a loan  
20 modification to save the home for the children and myself to  
21 live in, attempted to get a loan modification.

22  
23 31. Russ again lied to me and made me promises that he  
24 never intended to keep. Russ stopped me from doing a loan  
25 modification with IndyMac Bank. Russ told them that the asset  
26 belonged to him and that I have no right to modify the loan in  
27 any way. See **Exhibit 7**.  
28



1 31. When I realized that Russ never had any intention of  
2 performing on any of his promises, I attempted to get the Court  
3 to either order Russ to the mortgage or in the alternative have  
4 the funds necessary to maintain the family home into a spousal  
5 support order. The Court, unfortunately, was unable to grant  
6 this request as the State Court stated in March 6, 2012 that I  
7 forever waived my right to seek spousal support. See **Exhibit 8**  
8 **page 3-4.**

10 31. What is clear from the actions of Russ is that he  
11 never intended to allow me to reside in the home until our  
12 daughter Mackenzie reached 18 years of age. He never intended to  
13 allow me to save our home and do a loan modification. Russ only  
14 made those promises in an effort to induce me to waive my right  
15 to the community assets, RKF, H. Roth Management, RK Family  
16 Trust and the family home. He made those promises to induce me  
17 to relinquish all of my rights and interests in valuable assets  
18 to him with false promises. In short, Russ committed fraud.

21 32. And as a result of this fraud, I have lost the right  
22 to receive as spousal support approximately \$4,709.00 a month,  
23 the amount that Judge Terrell in family court found would be due  
24 and owing as and for spousal support but for my relinquishment  
25 of spousal support based upon Russ' promises to me that induced  
26 me, to my detriment to waive spousal support. As a result I have  
27 suffered damages in the approximate amount of \$565,080.00, which  
28

1 equates to \$4,709.00 a month for a minimum of 10 years or until  
2 our daughter Mackenzie would have reached the age of 18.

3 **Transfer Of RKF Assets**

4 33. One of the assets that I, in reliance on the promises  
5 made to me by Russ, RKF Investments awarded to Russ in the  
6 judgment of legal separation was transferred by Russ to his  
7 father in an effort to avoid paying me child support.  
8

9 34. I brought a motion for a turnover order of this asset  
10 to me.

11 35. The family Court found that this asset was valuable  
12 asset and had cash reserves of approximately \$105,000.00. See  
13 **Exhibit 8 page 2.**  
14

15 36. The Family Court, Judge Terrell made a finding the  
16 transfer of this valuable asset to Russ' father was fraudulent  
17 and ordered that the asset be turned over to me immediately. See  
18 **Exhibit 9**  
19

20 37. Russ has not complied with this order, which is still  
21 in full force and effect. As Russ failed to disclose this  
22 transfer on the court on his bankruptcy schedules and has refuse  
23 to comply with this order, I request that the Court deny Russ a  
24 discharge and order that this asset be turned over to me  
25 forthwith.  
26

27 ///

28 ///

**Child Support Arrears**

38. The family Court has already adjudicated that Russ is to pay child support in the sum of \$2,092.00 retroactive to August 1, 2011. This was based upon a motion filed by Russ to comply with the Appellate Court's ruling.

39. Based upon the finding that support is to be at the rate of \$2,092.00 I have compiled the following spreadsheet of the support arrears currently owed. See **Exhibit 10**.

40. This chart clearly shows that when the support payments were ordered by Judge Terrell to be \$2,136.00, Russ refused to comply with the order and paid what he felt like paying.

41. So doing simple math, the numbers are clear. From the original stipulated order of support of \$1,454.00 per month, Russ should have paid for the period of January 2011-May 2014 the total sum of \$58,160.00. He actually paid the sum of \$50,387.28. He is in the arrears the sum of \$7,772.72.

42. Now if you take the new order of \$2,092.00 back to August 1, 2011 to present, he is in the arrears as follows:

The difference between \$1,454.00/\$2,092.00 is \$638.00. Take \$638.00 times 33 months (August 2011-May 2014) you get the sum of \$21,054.00 in the arrears.

1 43. Now for the months of June, July and August 2014 since  
2 Russ is paying \$1,635.00 he is in the arrears the sum of \$457.00  
3 for three months for the total of \$1,371.00.

4 44. I request that this Court adopt the findings of the  
5 family court and find that Russ is in the arrears of child  
6 support in the sum of \$30,197.72 and find that this support  
7 arrears is non-dischargeable pursuant to 11 USC §523(a)(5).  
8

9 **Attorney Fees**

10 45. Based upon the conduct of Russ, the family Court  
11 ordered Russ to pay to me as and for attorney fees the sum of  
12 \$6,000.00. See **Exhibit 8 page 7 and 9 page.**  
13

14 46. Russ has not paid this sum that has been ordered by  
15 the Court.

16 47. This sum was awarded to me by the family court during  
17 the course of our divorce proceeding and was not and does not  
18 qualify for alimony, maintenance or support within the  
19 definition of same, pursuant to 11 USC §523(a)(5).  
20

21 48. Russ has been claiming that he has "overpaid" child  
22 support and is not in arrears at all. This statement is blatant  
23 lie. First, as you can see from **Exhibit 6**, Russ was already in  
24 2010 in arrears in the sum of \$10,000.00. He agreed to pay that  
25 sum and he did pay it albeit not in full. He has only paid  
26 approximately \$5,750.00 of the \$10,000 in arrears.  
27  
28

1 I therefore request that this Court grant me judgment as  
2 follows:

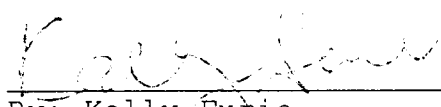
3 1. That Russ, based upon his fraud owes me the sum of  
4 \$565,080.00 and this sum is not discharged in this bankruptcy;

5 2. That Russ is in the arrears in child support the sum  
6 of \$30,197.72 and this sum is not discharged in this bankruptcy;

7 3. That Russ owes attorney fees in the sum of \$6,000.00  
8 and this sum is not discharged in this bankruptcy.

9 I declare under penalty of perjury under the laws of the  
10 State of California, that the foregoing is true and correct.

11 Executed this August 23, 2014.

12  
13  
14  
15   
16 By: Kelly Furie  
17 Declarant  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
21601 VANOWEN ST. SUITE 208 CANOGA PARK, CA. 91303

A true and correct copy of the foregoing document entitled (*specify*): PLAINTIFF'S DECLARATION FOR TRIAL

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that he following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) 9/4/14, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

RUSSELL FURIE 26766 CLAUDETTE STREET, SUITE 415 CANYON COUNTRY, CA. 91351

☐ Service information continued on attached page

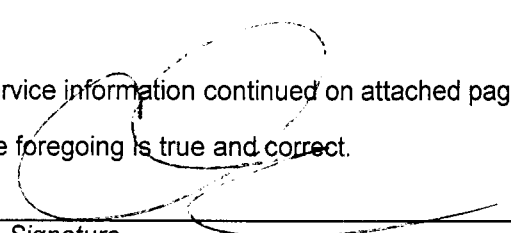
**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

9/4/14  
Date

CLAUDIA ESPINOZA  
Printed Name

  
Signature